

procedure. Where appropriate, the Secretary may use another sales procedure, as described in § 291.110.

(2) Properties may be sold under the following programs:

(i) *Insured.* A property that HUD believes meets the intent of the Minimum Property Standards (MPS) for existing dwellings (Requirements for Existing Housing, One to Four Family Living Units, HUD Handbook 4905.1) will be offered for sale in "as-is" condition with FHA mortgage insurance available.

(ii) *Insured with repair escrow.* A property that requires no more than \$5,000 for repairs to meet the intent of the MPS, as determined by the Secretary, will be offered for sale in "as-is" condition with FHA mortgage insurance available, provided the mortgagor establishes a cash escrow to ensure the completion of the required repairs.

(iii) *Uninsured.* A property that fails to qualify under either paragraph (c)(2)(i) or (ii) of this section will be offered for sale either in "as-is" condition without mortgage insurance available, or under section 203(k) of the National Housing Act (12 U.S.C. 1709(k)).

(d) *Financing.* (1) Except as provided in paragraph (d)(2) of this section, the purchaser is entirely responsible for obtaining financing for purchasing a property.

(2) HUD, in its sole discretion, may take back purchase money mortgages (PMMs) on property purchased by governmental entities or private nonprofit organizations who buy property for ultimate resale to owner-occupant purchasers with incomes at or below 115 percent of the area median income. When offered by HUD, a PMM will be available in an amount determined by the Secretary to be appropriate, at market rate interest, for a period not to exceed five years. Mortgagors must meet FHA mortgage credit standards.

(e) *Environmental requirements and standards.* Sales under this part are subject to the environmental requirements and standards described in 24 CFR part 50, as applicable.

(f) *Flood insurance requirements.* Flood insurance must be obtained and maintained as provided in 24 CFR 203.16a.

(g) *Lead-based paint poisoning prevention.* Properties constructed before 1978

are subject to the lead-based paint poisoning prevention requirements contained in 24 CFR part 35 and 24 CFR part 200, subpart O.

(h) *Open listings.* Except as provided in paragraph (i) of this section, properties are sold on an open listing basis with participating real estate brokers. Any real estate broker who has agreed to comply with HUD requirements may participate in the sales program. Purchasers participating in the competitive sales program, except government entities and nonprofit organizations, must submit bids through a participating broker.

(i) *Asset management and listing contracts.* (1) A field office may invite firms experienced in property management to compete for contracts that provide for an exclusive right to manage and list specified properties in a given area.

(2) In areas where a broker has an exclusive right to list properties, a purchaser may use a broker of his or her choice. The purchaser's broker must submit the bid to HUD through the exclusive broker.

§ 291.105 Competitive sales procedures.

(a) *General.* (1) Properties are sold to the general public on a competitive bid basis through local real estate brokers, except as provided in § 291.100(h).

(2) For properties being offered with mortgage insurance, priority will be given to owner-occupant purchasers, as defined in § 291.5, for a period of up to 30 days, as determined by HUD. For properties offered without mortgage insurance, priority will be given to governmental entities and nonprofit organizations prior to other owner-occupant purchasers.

(b) *Net offer.* The net offer is calculated by subtracting from the bid price the dollar amounts for the following:

(1) If requested by the purchaser in the bid, HUD will pay all or a portion of the financing and loan closing costs and the broker's sales commission, not to exceed the percentage of the purchase price determined appropriate by the Secretary for the area. In no event

will the amount for broker's sales commission exceed 6 percent of the purchase price, except for cash bonuses offered to brokers by HUD for the sale of hard-to-sell properties.

(2) In the case of properties sold under the insured sales with repair escrow program, the repair escrow amount is also deducted from the bid to determine the net offer.

(c) *Acceptable bid.* HUD will accept the bid producing the greatest net return to HUD and otherwise meeting the terms of HUD's offering of the property, with priority given to owner-occupant purchasers as described in paragraph (a)(2) of this section. The greatest net return is calculated based on the net offer, as described in paragraph (b) of this section.

(d) *Bid period.* After properties are initially advertised, bids are accepted for a 10-day period, with all offers received during the 10 days considered to have been received simultaneously, except as described in paragraph (e) of this section. Offers received on a property before the 10-day bidding period begins will be returned. Offers received after the 10-day period will not be considered at the bid opening, but will be considered during the extended listing period if no acceptable bid was received during the 10-day period.

(e) *Full price offers.* HUD field offices that operate under a "full price offer" program open offers at specified times during the 10-day bidding period. If an offer for the full list price and otherwise meeting the terms of the offering is received, it will be accepted at the time of the opening and the 10-day bid period cancelled.

(f) *Extended listing period.* Properties not sold at the bid opening will remain available for an extended listing period. All bids received on each day of the extended listing period will be considered as being received simultaneously, and will be opened together at the next scheduled daily bid opening. Properties that fail to sell within 30 days after being offered for competitive bidding will be reanalyzed and relisted. If a property's price or terms are changed, it will be subject to another competitive bidding period as described in paragraph (d) of this section.

(g) *Bid requirements.* (1) All bids submitted, whether during the 10-day bid period or the extended listing period, must be in the form of a fully completed sales contract, in a form prescribed by HUD, signed by both the submitting real estate broker and the prospective purchaser. If the purchase is to be an insured sale, a field office may also require that supporting exhibits for mortgage credit analysis accompany the initial submission of the bid.

(2) Unless the Secretary specifically authorizes another bid process, bids must be placed in sealed envelopes marked with the property number, address, and return address of the broker. All bids not indicating that the purchaser will occupy the property will be considered as investor offers.

(3) Noncomplying bids will be returned to the broker with an explanation for the noncompliance decision and information about whether the property is still available.

(h) *Earnest money deposits.* (1) The amount of earnest money deposit required for a property with a sales price of \$50,000 or less is \$500, except that for vacant lots the amount is 50 percent of the list price. For a property with a sales price greater than \$50,000, the amount of earnest money deposit required in the area is set by the field office, in an amount not less than \$500 or more than \$2,000. Information on the amount of the required earnest money deposit is available from the field office or participating real estate brokers.

(2) All bids must be accompanied by earnest money deposits in the form of a cash equivalent as prescribed by the Secretary, or a certification from the real estate broker that the earnest money has been deposited in the broker's escrow account. If a bid is accepted by HUD, the earnest money deposit will be credited to the purchaser at closing; if the bid is rejected, the earnest money deposit will be returned. Earnest money deposits are subject to total or partial forfeiture for failure to close a sale.

(i) *Multiple bids.* Real estate brokers may submit unlimited numbers of bids on an individual property provided each bid is from a different prospective

purchaser. If a purchaser submits multiple bids on the same property, only the bid producing the highest net return to HUD will be considered. If a prospective owner-occupant purchaser submits a bid on more than one property, the first of those bids that produces the greatest net return to HUD will be accepted and all other bids from that purchaser will be eliminated from consideration. However, if the prospective owner-occupant purchaser has submitted the only acceptable bid on another property, then that bid must be accepted and all other bids from that purchaser on any other properties will be eliminated from consideration.

(j) *Opening the bids.* Unless the Secretary specifically authorizes another bid process:

(1) The bids will be opened publicly at a time and place designated by the HUD field office.

(2) Each bid will be announced when opened, and acknowledgment made of the offer that produces the greatest net return to HUD. Successful bidders will be notified through their real estate brokers by mail, telephone, or other means. Acceptance of a bid is final and effective only upon HUD's execution of the sales contract and mailing of a copy of the executed contract to the successful bidder or the bidder's agent.

(k) *Counteroffers.* If all bids received on a property are unacceptable, a field office may notify all bidders or their brokers that HUD will accept an offer equalling a predetermined net acceptable price. Bidders must submit an acceptable offer before the established bid cut-off period, to be determined by the field office. The highest acceptable offer received within the specified period of time, including any offer received from a bidder who did not submit a bid during the bid period, will be accepted, thus terminating the counteroffer negotiations. In case of identical bids, award will be determined by drawing lots.

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§ 291.110 Other sales procedures.

(a) *Direct sales of properties without mortgage insurance to governmental enti-*

ties and private nonprofit organizations.

(1) State and local governments, public agencies, and qualified private nonprofit organizations that have been preapproved to participate by HUD, according to standards determined by the Secretary, may purchase properties directly from HUD at a discount off the list price determined by the Secretary to be appropriate, but not less than 10 percent, for use in HUD and local housing or homeless programs.

(2)(i) Purchasers under paragraph (a)(1) of this section must designate geographical areas of interest, by ZIP code, to appropriate HUD field offices. Upon request, for those properties not eligible for mortgage insurance, and before they are publicly listed, field offices will notify governmental entities and nonprofit organizations in writing when eligible properties become available in the areas designated by them. Field offices will coordinate the dissemination of the information to ensure that if more than one purchaser designates a specific area, those purchasers receive the list of properties at the same time, based on intervals agreed upon between HUD and the purchasers. A property in this section will be sold to the first eligible purchaser submitting an acceptable contract.

(ii) Purchasers under paragraph (a)(1) of this section must notify HUD of preliminary interest in specific properties within five days of the notification of available properties (if notification is by mail, the five days will begin to run five days after mailing). Those properties in which purchasers express an interest will be held off the market for a 10-day consideration and inspection period. Other properties on the list will continue to be processed for public sale. HUD may limit the number of properties held off the market for a purchaser at any one time, based upon the purchaser's financial capacity as determined by HUD and upon past performance in HUD programs. At the end of the 10-day consideration and inspection period, properties in which no governmental entity or nonprofit organization has expressed a specific intent to purchase will be offered for sale under the competitive bid process.